PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant	:	Yoon Kean Wong		
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

SIR:

This Reply Brief is in furtherance to the Appeal Brief filed on October 20, 2011 and the Examiner's Answer mailed on January 25, 2012. This Reply Brief contains the following sections in the order set forth below:

I. STATUS OF CLAIMS
II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
III. ARGUMENT

I. STATUS OF CLAIMS

Claims originally filed: 1-25

Claims added: 26-59

Claimed canceled: 1-29, 35, 38, 43, 47, 53 and 55

Claims withdrawn from consideration: None

Claims allowed: None

Claims objected to: None

Claims rejected: 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59

Claims on appeal: 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59

II. GROUNDS OF REJECTIONS TO BE REVIEWED ON APPEAL

Whether claims 30-32, 36, 37, 39, 40, 45, 46, 48-50, 52, 54 and 56-59 are patentable under 35 U.S.C. § 103(a) over United States Patent No. 6,901,261 to Banatre et al. (hereinafter "Banatre") in view of United States Patent No. 5,528,248 to Steiner et al. (hereinafter "Steiner") and in view of United States Patent No. 6,324,522 to Peterson et al. (hereinafter "Peterson").

Whether claims 33, 41, 44 and 51 are patentable under 35 U.S.C. § 103(a) over Banatre in view of Steiner in view of Peterson and in further view of United States Patent No 6,269,342 to Brick et al. (hereinafter "Brick").

Whether claims 34 and 42 are patentable under 35 U.S.C. § 103(a) over Banatre in view of Steiner in view of Peterson and in further view of United States Patent No 6,012,834 to Dueck et al. (hereinafter "Dueck").

Whether claims 30-33, 36, 37, 39-41, 44-46, 48-52, 54, and 56-59 are patentable under 35 U.S.C. § 103(a) over European Patent No. 0568824A2 to Vendetti et al. (hereinafter "Vendetti") in view of Steiner.

Whether claims 34 and 42 are patentable under 35 U.S.C. § 103(a) as being over Vendetti in view of Steiner and in further view of Dueck.

III. ARGUMENT

This reply brief is in response to the Examiner's Answer of 01/25/2012 and supplements the arguments submitted in the Appeal Brief of 10/20/2011.

Claim Rejections – 35 U.S.C. § 103 – Ground A

Claims 30-32, 36, 37, 39, 40, 45, 46, 48-50, 52, 54, and 56-59 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Banatre in view of Steiner and further in view of Peterson. Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the rejection.

As discussed in the Appeal Brief, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest ***every element*** of the claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59. Therefore claims 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59 define over the cited references whether taken alone or in combination. For example, claim 30 recites the following language, in relevant part:

> *a data processor configured to receive the location data and the personal identifier, to set a price for selling the product, and to adjust the price lower for selling the product to a person associated with the user identifier based at least in part on the location data.*

As correctly noted in the Office Action, the above-recited language is not disclosed by Banatre. *See* Office Action at page 4, paragraph 7. According to the Office Action, the above-recited language is disclosed by Peterson at column 24, lines 9-20. *See* Office Action page 5, paragraph 11. Applicant respectfully disagrees.

Peterson fails to disclose the above-recited language of the claimed subject matter. For example, Peterson at the given cite, in relevant part, states:

> The price is preferably calculated based on a table uploaded to the information network by the vendor. The table includes a list of the customer ID's for the users authorized to conduct electronic commerce with the vendor, and a discount percentage associated with each customer ID for each product code. This enables the vendor to quote different prices to different customers, with the appropriate discounted price being displayed to the user based on the user's user ID given at log-on. If no discount percentage is given, the displayed price will be list price.

See Peterson at column 24, lines 9-18. As indicated above, Peterson merely discloses associating a price with a user ID, not location data received by a data processor. By way of contrast, the claimed subject matter discloses "a data processor configured to receive the location data and the personal identifier, to set a price for selling the product, and to adjust the price lower for selling the product to a person associated with the user identifier based at least in part on the location data." Therefore, Peterson fails to disclose, teach or suggest the above-recited language. Consequently, the cited references, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 30.

In the Examiner's Answer, paragraph 40, it is stated that the Examiner never relied on Peterson alone to disclose "*a data processor configured to receive the location data and the personal identifier, to set a price for selling the product, and to adjust the price lower for selling the product to a person associated with the user identifier based at least in part on the location data*". Rather, both Banatre and Peterson were relied upon.

The Final Office Action does indeed partition the claim language and apply the references separately. For instance, Banatre is cited as teaching "*a data processor configured to receive the location data and the personal identifier*" while Peterson is cited as teaching "*a data processor configured to receive ... [a] personal identifier, to set a price for selling the product, and to adjust the price lower for selling the product [for] a person associated with the user identifier*".

Neither the Finalk Office Action nor the Examiner's Answer, however, address the entirety of the claim language. Specifically, neither reference is cites as teaching "*to adjust the price lower for selling the product to a person associated with the user*

identifier ***based at least in part on the location data.***" {emphasis added} Thus, the Examiner has not demonstrated that the combination of references cited teach every element, feature, and limitation as claimed. Specifically, neither reference teaches adjusting price lower ***based at least in part on the location data.***

For at least these reasons, claim 30 is patentable over the cited references, whether taken alone or in combination. In addition, claims 39 and 48 recite features similar to those recited in claim 30. Therefore, claims 39 and 48 are not obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 30. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 30, 39 and 48. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 31-34, 36, 37, 40-42, 44-46, 49-52, 54 and 56-59 that depend from claims 30, 39 and 48, and therefore contain additional features that further distinguish these claims from the cited references.

Claim Rejections – 35 U.S.C. § 103 – Ground B

Claims 30-33, 36, 37, 39-41, 44-46, 48-52, 54, and 56-59 stand alternatively rejected under 35 U.S.C. § 103(a) as being unpatentable over European Patent No. 0568824A2 to Vendetti et al. (hereinafter "Vendetti") in view of Steiner. Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the rejection.

Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59. Therefore claims 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59 define over the cited references whether taken alone or in combination. For example, claim 30 recites the following language, in relevant part:

> *a data processor configured to receive the location data and the personal identifier, to set a price for selling the product, and to adjust the price lower for selling the*

> ***product*** *to a person associated with the user identifier based at least in part on the location data.* {*emphasis added*}

According to the Office Action, the above-recited language is disclosed by Vendetti at column 5, lines 20-44; column 6, lines 20-40; column 7, lines 1-30; and column 8, lines 31-50. *See* Office Action page 9, paragraph 24. Applicant respectfully disagrees.

Vendetti fails to disclose the above-recited language of the claimed subject matter. For example, Vendetti at the given cite arguably discloses a cellular telephone system that uses a plurality of zones to bill customers for calls transmitted within the plurality of zones. For example, each zone may be associated with a rate within a schedule table. Based upon a zone used to transmit a call, the appropriate rate may be charged to the user for the ***call***. *See* Vendetti at column 7, lines 1-30. By way of contrast, the claimed subject matter discloses "a data processor configured to receive the location data and the personal identifier, to set a price for selling the ***product***, and to adjust the price lower for selling the ***product*** to a person associated with the user identifier based at least in part on the location data."

Vendetti merely discloses a rate table associating rates for making calls with zones. Facilitation of placing telephone calls is a ***service*** as opposed to a ***product*** as claimed herein. In addition, there appears to be no price ***adjustment*** within the rate tables. For example, the prices within each zone remain constant and are not adjusted based upon the location of a mobile device. Claim 30 recites, "adjust the price lower for selling the ***product*** to a person associated with the user identifier based at least in part on the location data." Therefore, Vendetti fails to disclose, teach or suggest the above-recited language because Vendetti does not adjust a price for a ***product***. Consequently, the cited references, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 30.

For at least these reasons, claim 30 is patentable over the cited references, whether taken alone or in combination. In addition, claims 39 and 48 recite features similar to those recited in claim 30. Therefore, claims 39 and 48 are not obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 30. Accordingly, Applicant respectfully requests removal of the obviousness

rejection with respect to claims 30, 39 and 48. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 31-34, 36, 37, 40-42, 44-46, 49-52, 54 and 56-59 that depend from claims 30, 39 and 48, and therefore contain additional features that further distinguish these claims from the cited references.

Conclusion

A listing or the claims at issue was included in the Appeal Brief and has not been repeated herein.

The Examiner is invited to contact the undersigned to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the credit card in the previously filed credit card authorization form.

Respectfully submitted,

KACVINSKY DAISAK PLLC

/Gregory Stephens/
Gregory Stephens, Reg. No. 41,329
Under 37 CFR 1.34(a)

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KACVINSKY DAISAK PLLC
4500 Brooktree Road, Suite 302
Wexford, PA 15090
(724) 933-5529